5. Current State and Local Mitigation Practices

State law provides numerous tools to mitigate the impacts of development. Some of these tools are available exclusively to local governments, some to state government, and some can be used by both. The state can protect the capacity of its transportation system by requesting local governments to require new developments to mitigate their impacts on the state highway through the State Environmental Policy Act. In addition, it can acquire or regulate access to its highway system.

The full range of mitigation and impact fee options are available to local governments for mitigating the impacts of development. For those local governments required to implement concurrency, this mitigation is an important way to accommodate new development in order to meet the transportation concurrency requirement.

However, neither the state nor local governments have taken full advantage of their abilities to fund transportation system improvements through developer mitigation and fees. Furthermore, access control enforcement is a growing problem for the state as development pressures outside urban growth areas impact rural roadways.

WSDOT Review of Development Proposals

The primary goal of the Washington State Department of Transportation's (WSDOT) development review process is to ensure the state highway system remains safe and has the capacity to move people and goods efficiently.[1] The basis for WSDOT's review of development proposals and mitigation requests is the State Environmental Policy Act (SEPA). WSDOT dedicates 25 Development Services staff located in six regional offices to conduct SEPA reviews. The details of each office's implementation practices vary somewhat; but generally, the review process is guided by the 2005 Development Services Manual.

The Review Process

Typically, the development review process begins when a local agency notifies WSDOT of a proposed development. This notification often takes the form of a short description of the proposal and the SEPA threshold determination made. The threshold determination may be a determination of non-significance, a mitigated determination of non-significance, or a determination of significance which requires an environmental impact statement. Some local governments may also attach the development proposal or a SEPA checklist.

SEPA requires local governments to provide notice to agencies that might be affected by a development proposal, but the law relies on local discretion to determine which agencies might be impacted. Consequently, WSDOT is not always notified of development proposals that might impact state transportation facili-

1. Development Services Manual. Washington State Department of Transportation. September, 2005.

DEVELOPMENT REVIEW THRESHOLDS: WSDOT only requests mitigation if a development proposal would have a probable significant adverse impact. For example, thresholds may include:

Safety: adding "10 or more peak-hour trips to any high-accident location"

Channelization: adding "25 or more peak-hour trips to an intersection or connection"

Vehicular Trips: "adding 10 or more peak-hour trips to any state highway programmed capacity improvement"

Level Of Service (LOS): reducing a pre-determined LOS

ties. This is especially an issue for development proposals that are not located immediately adjacent to a state transportation facility.

Development Services staff generally have 14 days to review and comment on threshold determinations and up to 45 days to review and comment on environmental impact statements. These relatively short time allowances for review require quick turnarounds for WSDOT's Development Services staff. The review times are further compressed when adequate notice is not received, limiting the ability of WSDOT to engage in the internal coordination and communication that helps effectively build good comments.

Some of the SEPA notices received by WSDOT do not involve developments that will impact the state transportation system. Based on previous experience, Development Services staff quickly cull these proposals in order to focus their time on reviewing projects that may have impacts. Of the proposals reviewed, most are determined to have no impact or insufficient impact to meet established WSDOT thresholds.

Mitigation Assessment

Development proposals that do have probable significant adverse impacts to state transportation facilities are further evaluated to determine whether or not the impacts can be sufficiently mitigated and, if mitigation is appropriate, what the form and level of that mitigation should be. While WSDOT does have clearly defined policies for assessing mitigation, it does not have clear standards for the substance of private traffic analyses. Nor does it have established methods for the tracking of development proposals, the documentation of review practices, and the reporting of results. WSDOT is currently developing a statewide development services database to provide better consistency and accountability.

2005 WSDOT DEVELOPMENT REVIEW ACTIVITIES:

» Regional staff reviewed over 3,200 development proposals with potential state transportation impacts

» Over 2,000 of the proposals were determined to have no probable significant adverse impacts

» Regional staff requested impact mitigation for about 560 of the proposals

» At year's end, WSDOT had received some level of impact mitigation—not necessarily all that was requested—for 340 of the proposals. (Additional impact mitigation for 2005 proposals may be received in 2006 and 2007).

SEPA mitigation must be based on the specific adverse environmental impacts of the development proposal and must be reasonable and capable of being accomplished.[2] Mitigation may be a monetary contribution by a developer to a programmed WSDOT project. Or it may involve developer-constructed transportation improvements or the dedication of developer-owned property for public rights-of-way.

WSDOT mitigation policies, based on SEPA, limit the state's ability to address the impacts of development on the state transportation system. WSDOT does not collect mitigation fees for projects that are already funded, correct pre-existing deficiencies, or consist of preservation and maintenance activities. Also, WSDOT does not request developer-constructed transportation improvements when the developer has to obtain additional right-of-way from a third party. Right-of-way donations must be based on an approved WSDOT right-of-way plan. Finally, most local agencies add more thresholds for collecting SEPA mitigation which further restricts the state's ability to use SEPA for the mitigation of development impacts.

Mitigation Enforcement

If a development requires a WSDOT access permit, WSDOT can deny permit approval based on SEPA-identified impacts or require developers to mitigate their impacts as a condition of approval for the permit. When a WSDOT access permit is not required, WSDOT can only request that local governments condition or

2. RCW 43.21C.060

deny developments based on the state's assessed impacts. Local governments consider WSDOT's mitigation requests and may choose to enforce it, reduce it, replace it, or disregard it. As a result, SEPA mitigation often becomes a time-consuming process of negotiation for WSDOT staff. The development of collaborative relationships and the negotiation of intergovernmental agreements with local governments increase the ability of the state to secure a predictable level of mitigation for development impacts to its transportation system. Development Services staff have found these agreements to be highly effective, but difficult to negotiate since local governments have little incentive for allowing their control over this process to be reduced. Development Services staff have also found pre-application meetings with local governments and developers help address the state's concerns early in the planning process.

If a local government SEPA decision substantially interferes with the state's interests, the state can appeal the determination. However, the appeals process is complex and politically sensitive, consuming a lot of time, energy and legal costs. As such, it is used sparingly. Over the last five years, WSDOT has appealed only two SEPA mitigation determinations.

WSDOT Access Control on State Highways

WSDOT controls access to Washington State highways in order to preserve the safety and efficiency of these highways as well as to preserve the public investment. All Washington state highways are classified as either limited access or managed access. Control of access is accomplished by either acquiring rights of access from abutting property owners (limited access control) or by regulating access connections to the highway (managed access control). Until WSDOT acquires limited access rights, the route is a managed access highway.

Limited Access Highways

Highways controlled by acquiring abutting property owners' access rights are termed limited access facilities. They are further distinguished as having full, partial or modified control.

Public at-grade intersections are only allowed on partial or modified control limited access highways. If the intersection will serve a local arterial that connects to the local transportation network, and is included in the local agency's comprehensive roadway plan, the local government is not required to compensate WSDOT for the access right. If the intersection serves only a limited area, or does not connect to the local transportation network, WSDOT requires compensation based on the fair market value of the access right. Additionally, new intersections must comply with WSDOT design and spacing criteria.

Private approaches are only allowed under restrictive WSDOT criteria on partial and modified control limited access highways. There are six different types of approaches allowed, ranging from residential to business to special use. For private approaches within limited access areas, WSDOT requires compensation at the fair market value of the access route.

Managed Access Highways

The WSDOT region offices have permit authority for managed access highways in unincorporated areas. Each WSDOT region office manages its permit process differently; although all processes comply with statutory and administrative re-

quirements. Managed access highways are classified into five categories, ranging from the most restrictive Class 1 to the least restrictive Class 5.[3] Accesses on managed access highways are conforming if they meet or exceed current department location, spacing and design criteria.[4] An access is nonconforming if it does not meet these criteria.[5] All approaches on Class 1 and Class 2 highways are nonconforming and must be removed when other reasonable access becomes available.[6] Nonconforming permits may be issued for nonconforming access when the property has no other reasonable access. Variance permits may be issued for nonconforming connections for highways in Class 2, 3, 4 or 5 based on WSDOT's discretion regarding whether the access will affect the safety, maintenance or operation of the highway.

Approaches to managed access highways that existed and were in active use prior to July 1, 1990 are exempt from permitting.[7] These grandfathered approaches do not require an access connection permit if the use, design and traffic flow remain the same as they were on July 1, 1990. However, the property owner must apply for an access permit if there is a significant change in the land use of the property, the physical configuration of the access, or the volume of traffic on the highway.[8] If the permit is not obtained, WSDOT may close the connection.

Cities or towns are the permitting authority for managed access highways within their boundaries. Under state law, they are required to adopt access standards that meet or exceed WSDOT standards.[9] However, in the experience of the WSDOT Access and Hearings Unit, local governments do not consistently adopt and enforce adequate access control standards on state highways within their boundaries.

Access Control Implementation Issues

The complexity of access control in Washington is a substantial barrier to its effective implementation. Washington is one of the few states in the nation with a split access control system, with one portion of the highway system controlled through the acquisition of access rights and the other portion controlled based on regulation. In addition, both limited access and managed access highways are further defined through sub-classifications. Access control opportunities are often missed because developers, local agencies, and even WSDOT staff have a limited understanding of the details of the access control system.

Access control opportunities are also sometimes missed when local governments fail to notify WSDOT when they receive a land use permit application that might require WSDOT access control. Access control works best when the state receives early notice of potential developments. WSDOT encourages developers to obtain state approval prior to local development approval in order to identify appropriate access or approach locations and types prior to development site layout. Some local jurisdictions take this a step further by requiring developers to secure a letter from WSDOT addressing state highway access prior to their own land use approval. If local land use approvals are given prior to securing state approval,

3. WAC 468-52-040
4. WAC 468-52-020
5. Ibid.
6. Memorandum. Access and Hearings Engineer. WSDOT. December 17, 1996.
7. RCW 47.50.080(1)
8. Ibid.
9. RCW 47.50.030(3)

the developer runs the risk of having the state deny the access or approach, resulting in the delay and expense of site plan revisions or appeals.

The enforcement of WSDOT's access control rights can also be challenging. Grandfathered accesses were not consistently inventoried and recorded when the managed access system was created. Consequently, illegal accesses can be difficult to identify and are often politically difficult to address after-the-fact. Once homes or businesses have been built relying on the illegal access, WSDOT's enforcement of its access rights could result in substantial expense and hardship for the property owner. While WSDOT is allowed to and does close illegal accesses, many illegal accesses are eventually allowed with the property owner paying WSDOT for the value of the access right. The compensation does not address the adverse impact of the illegal access because such payments are not used for mitigation. Rather, the monies are paid into the state's general fund.

Finally, because the state must provide reasonable access to properties abutting its highways if no other public roads serve them, some accesses are constructed that reduce the capacity and safety of the state highway system. While the state could close these state highway accesses once local roads are available, the timing of the provision of those roads are not within the state's control.

Better access control on Washington state highways is a priority for both the Federal Highway Administration and WSDOT. The WSDOT Access and Hearings Unit is in the process of developing a strategic plan for improving access management. They anticipate providing additional internal training, better documentation of permitted and grandfathered approaches, and local agency training.

Local Mitigation Practices

Local governments in Washington state use a variety of financial tools to collect at least a portion of the transportation infrastructure funds that may be needed from new developments in order to meet concurrency requirements. In its 2002-03 study of the effectiveness of concurrency in Snohomish, King, Pierce and Kitsap counties, the Puget Sound Regional Council (PSRC) asked local governments about their methods of financing the transportation infrastructure improvements needed because of new development. While the study results cannot be generalized to the entire state, they do indicate how local governments have approached financing transportation infrastructure to meet concurrency requirements in the urban areas of the state.

The first phase of the PSRC study surveyed the 86 jurisdictions within its boundaries. Sixty-eight jurisdictions participated in the survey. PSRC asked the jurisdictions what revenues were being generated through their concurrency programs. Twenty-two percent of those who responded to the question indicated no revenues were generated through their concurrency programs.[10] Fifty-nine percent of the jurisdictions that reported receiving revenues collected SEPA mitigation fees, 55 percent collected impact fees, 18 percent required developers to build infrastructure improvements, and 1 percent collected some other type of development fee.[11] Some jurisdictions had more than one revenue-generating program in place.

10. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 23.
11. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 23.

Surprisingly, most study participants reported that a relatively minor portion of their annual transportation improvement costs are covered by direct development related fees or assessments. Eighty percent of the responding jurisdictions covered less than one-tenth of their annual transportation improvement costs through development fees or assessments.[12] Local jurisdictions reported that local tax revenues pay for the greatest share of their transportation improvement costs.[13]

The focus groups that followed the survey led PSRC to conclude that "where impact fees are assessed, rates and approaches can vary significantly."[14] For example, participants reported transportation fees varying from $600 to $4,000 per new home.[15] Some focus group participants expressed a preference for assessing SEPA mitigation fees over impact fees because they can recover the full cost of the mitigation action and the results are more tailored to each individual development.[16] However, the group also noted the drawbacks of SEPA mitigation: it is restricted to site-specific impacts, it can be piecemeal in terms of implementing the comprehensive plan, and developers are less fond of SEPA because the results are less predictable.[17] The focus group acknowledged that when they negotiate with developers to mitigate transportation-related impacts, the outcomes are more reflective of the participants' negotiating skill than the actual need.[18] The group reported that the time frames for expending mitigation have occasionally required them to return the money they had collected.[19]

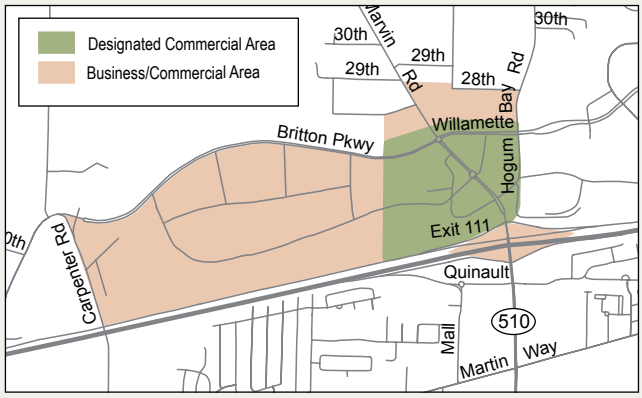
PSRC held further discussions on generating revenue to fund concurrency during a full-day workshop on concurrency attended by 90 participants. Participants agreed "they could be more aggressive in collecting funds and there was some support for working together to set funding levels higher."[20] They noted "there needs to be a clearer linkage between development fees and transportation projects (or programs), a need for better cost methodologies and better capital facilities planning, and more certainty in the process – especially if fees are set higher."[21]

12. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 24.
13. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 25.
14. Assessing the Effectiveness of Concurrency: Phase 2 Report – Analysis of Practices. Puget Sound Regional Council. August 2002: 9.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Assessing the Effectiveness of Concurrency: Phase 2 Report – Analysis of Practices. Puget Sound Regional Council. August 2002: 14.
20. Assessing the Effectiveness of Concurrency Phase 3 Report – Workshop Results. Puget Sound Regional Council. January, 2003: 18.
21. Ibid.

Lacey Initiates Improvements to the State Transportation System

In the early 1980s, the City of Lacey and Thurston County began planning for significant residential, industrial, and commercial growth for the 3,600 acre northeast area of Lacey known as Hawks Prairie. The area was largely undeveloped with a few scattered single family homes and some light industrial uses. The area is located north of Interstate 5 (I-5) and is served by the Marvin Road/I-5 Interchange.

In 1995, the Marvin Road/I-5 Interchange failed to meet the City's adopted level of service, preventing Lacey from approving development applications in the Hawks Prairie area. In 1996, Lacey placed a six-month moratorium on the acceptance of development applications for the area and authorized a transportation study, a market analysis, and strategic plan for the area.



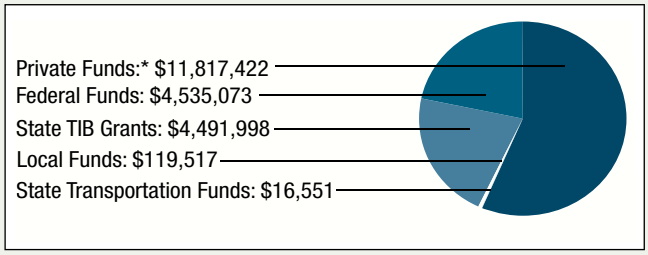
The Hawks Prairie Area in Lacey

The market analysis showed that even though Lacey's population was steadily increasing, the amount of money residents spent in Lacey was steadily decreasing. In order to capture some of that lost revenue, Lacey adopted new zoning regulations and design standards in 1997 for the 600-acre Hawks Prairie Business District. Lacey planned for the area to become a second commercial hub. The city lifted the temporary moratorium, but building was still restricted due to the transportation concurrency requirements triggered by the failing Interchange.

Because the Interchange was the intersection of a federal highway and a state route, Lacey officials initially hoped the state would fix the Interchange. But faced with fewer federal dollars coming to the state and the failure of the 1997 legislature to pass a gas tax increase, the expensive interchange project was not likely to be funded anytime soon.

Lacey could have adopted a failing level of service for the road network surrounding the Interchange, but the city engineer admitted, "It would be irresponsible to do that, especially there. We want to keep it functioning."[1]

So Lacey officials began assembling a comprehensive funding package to fix the problem. The solution would eventually include federal and state transportation funds, state grants from the Transportation Improvement Board (TIB), city funds, developer mitigation fees and right-of-way contributions, and the proceeds of a local improvement district. The coordination of these funding sources was challenging and required improvements not only to the Interchange, but also to the local road network to handle the traffic from the improved Interchange.



Who Paid for the Marvin Road Interchange and Supporting Local Street Network Improvements?

Hawks Prairie has been an economic success for the City of Lacey, and the city continues to proactively plan for the continued growth of the area. The city has been working with private developer Tri Vo to realize its vision for a vibrant community center in Hawks Prairie. The "Gateway" development has been identified in Lacey's comprehensive plan and implementation ordinances for almost 10 years. Gateway will transform 800 acres in the area into "a city center with a large open-air mall, high-rise buildings, and thousands of residences and offices."[2]

The potential location of Cabela's, a well-known outdoors outfitter and tourist attraction, in the Gateway development has catalyzed action by state and local officials. The State Community Economic Revitalization Board recommended the legislature award $9.9 million in state grant funding to Lacey for the construction of an additional lane on the southbound off-ramp of the Marvin Road/I-5 Interchange as well as other local road network and utility improvements. Lacey and private developers have committed $24.6 million to the project. The $32.6 million Cabela's store would bring in an estimated $5 million annually in sales-tax revenue and draw about 2 million visitors each year.[3]

1. "Lacey Struggles to Expand Interchange." The Olympian. April 28, 1997: A2.
2. "Lacey, Landowner on Verge of Big Deal," The Olympian. September 22, 2006: A1.
3. "Lacey Closer to $9.9 million," The Olympian. May 20, 2006: A1.